

METROPOLITAN AREA PLANNING COMMISSION

MINUTES

December 22, 2005

The regular meeting of the Wichita-Sedgwick County Metropolitan Area Planning Commission was held on Thursday, December 22, 2005, at 1:30 P.M., in the Planning Department Conference Room, 10th floor, City Hall, 455 North Main, Wichita Kansas. The following members were present: Harold Warner Jr., Chair; Darrell Downing, Vice-Chair; Bill Johnson; Bob Aldrich; Elizabeth Bishop (In @ 1:32); M.S. Mitchell; Don Anderson; Denise Sherman (In @ 1:35); Bud Hentzen; Ronald Marnell (In @ 1:35) and Hoyt Hillman. Morris K. Dunlap and John W. McKay Jr. were not present. Staff members present were: John L. Schlegel, Secretary; Dale Miller, Current Plans Manager; Donna Goltry, Principal Planner; Neil Strahl, Senior Planner; Bill Longnecker, Senior Planner; Jess McNeely, Senior Planner; David Barber, Advanced Plans Manager and Rose Simmering, Recording Secretary.

1. Approval of December 8, 2005 meeting minutes.

MOTION: To approve the December 8, 2005 meeting minutes.

MITCHELL moved, **ALDRICH** seconded the motion, and it carried (8-0).

SCHLEGEL This is for anyone in the audience that happened to see in the newspaper a public hearing notice for an item that was labeled ZON2005-52, zone change from "LC" Limited Commercial to "GC" General Commercial with a Protective Overlay, generally located north of Kellogg between Byron Road and Seville Avenue. That item was advertised for today but is being deferred at the applicant's request until the January 19, 2006 meeting. That item will not be heard today, and if you are here today you are free to come back.

❖ SUBDIVISION ITEMS

2. Consideration of Subdivision Committee recommendations from the meeting of December 15, 2005.

2-1. SUB 2005-142: One-Step Final Plat -- EWY ADDITION, located south of 23rd Street South and on the east side of 231st Street West.

NOTE: This is unplatted property located in the County. It is in an area designated as "rural" by the Wichita-Sedgwick County Comprehensive Plan. It is located in the Goddard Area of Influence.

STAFF COMMENTS:

- A. Since neither sanitary sewer nor municipal water is available to serve this property, the applicant shall contact **County Code Enforcement** to find out what tests may be necessary and what standards are to be met for approval of on-site sewerage and water wells. A memorandum shall be obtained specifying approval.
- B. In conformance with the Urban Fringe Development Standards, for individual domestic wells that are proposed, a water availability evaluation must be provided to **Sedgwick County Code Enforcement** to assure the availability of an adequate, safe supply of water that does not impair existing water rights. Easements shall be dedicated for potential future extension of public water.
- C. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning Department for recording.
- D. **County Engineering** needs to comment on the status of the applicant's drainage plan. **A drainage plan is needed. A floodway reserve may be needed from the culvert to the northeast to accept drainage from adjacent property.**
- E. The vicinity map is labeled incorrectly.
- F. The plat denotes one opening along 231st St. West. The final plat shall reference the dedication of access controls in the plat's text. **Access controls are approved.**
- G. **Sedgwick County Fire Department** advises that all access drives shall be in accordance with Sedgwick County Service Drive Code.
- H. The west property line should be denoted with a bold line.
- I. The applicant is advised of the likelihood that the year "2006" will need to replace "2005" within various signature blocks.
- J. The Applicant is reminded that a platting binder is required with the final plat. Approval of this plat will be subject to submittal of this binder and any relevant conditions found by such a review.

- K. The platlor's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- L. The applicant shall install or guarantee the installation of all utilities and facilities that are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- M. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- N. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (Phone: 316-946-4556) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- O. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- P. The owner of the subdivision should note that any construction that results in earthwork activities that will disturb one (1) acre or more of ground cover requires a Federal/State NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Also, for projects located within the City of Wichita, erosion and sediment control devices must be used on ALL projects. For projects outside of the City of Wichita, but within the Wichita Metropolitan area, the owner should contact the appropriate governmental jurisdiction concerning erosion and sediment control device requirements.
- Q. Perimeter closure computations shall be submitted with the final plat tracing.
- R. Recording of the plat within 30 days after approval by the City Council and/or County Commission.
- S. The representatives from the utility companies should be prepared to comment on the need for any additional utility easements to be platted on this property.
- T. A compact disc (CD), which will be used by the City and County GIS Departments, detailing the final plat in digital format in AutoCAD. If a disc is not provided, please send via e-mail to Cheryl Holloway (E-Mail address: cholloway@wichita.gov). Please include the name of the plat on the disc.

MOTION: To approve subject to staff recommendations.

HENTZEN moved, **DOWNING** seconded the motion, and it carried (9-0).

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- 2-2. **SUB 2004-152: Revised One-Step Final Plat -- McNEIL ESTATES ADDITION**, located north of 69th Street North and on the east side of 127th Street East.

NOTE: This site is located in the County in an area designated as "rural" by the 1999 Update to the Wichita-Sedgwick County Comprehensive Plan. This revised plat includes one less lot.

STAFF COMMENTS:

- A. Since sanitary sewer is unavailable to serve this property, the applicant shall contact **County Code Enforcement** to find out what tests may be necessary and what standards are to be met for approval of on-site sewerage facilities. A memorandum shall be obtained specifying approval.
- B. The site is currently located within the Butler County Rural Water District No. 5. If service is available, feasible and the property is eligible for service, **County Code Enforcement** recommends connection. **The applicant proposes to connect to the rural water system.**
- C. In conformance with the Urban Fringe Development Standards, for individual domestic wells that are proposed, a water availability evaluation must be provided to **Sedgwick County Code Enforcement** to assure the availability of an adequate, safe supply of water that does not impair existing water rights. Easements shall be dedicated for potential future extension of public water.
- D. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning Department for recording.
- E. **County Engineering** needs to comment on the status of the applicant's drainage plan. **A drainage plan is needed.**
- F. The plat denotes one opening along 127th St. East. **County Engineering has approved the access controls.**
- G. A dimension on the final plat is needed of 25' on east end of strip.
- H. A dedication of right-of-way is needed for the adjoining strip to the south.

- I. The Applicant shall meet with **County Engineering** to discuss tying the adjoining strip to the south with adjoining property.
- J. All access drives shall be in accordance with Sedgwick County Service Drive Code.
- K. The platlor's text shall note the dedication of the street to and for the use of the public.
- L. The Applicant needs to verify the location of the pipeline easement indicated in the platting binder. The easement shall be shown if encumbering this plat, or verification provided that it is off-site or has been released.
- M. The platlor's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- N. The applicant shall install or guarantee the installation of all utilities and facilities that are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- O. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- P. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (Phone: 316-946-4556) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- Q. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- R. The owner of the subdivision should note that any construction that results in earthwork activities that will disturb one (1) acre or more of ground cover requires a Federal/State NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Also, for projects located within the City of Wichita, erosion and sediment control devices must be used on ALL projects. For projects outside of the City of Wichita, but within the Wichita Metropolitan area, the owner should contact the appropriate governmental jurisdiction concerning erosion and sediment control device requirements.
- S. Perimeter closure computations shall be submitted with the final plat tracing.
- T. Recording of the plat within 30 days after approval by the City Council and/or County Commission.
- U. The representatives from the **utility companies** should be prepared to comment on the need for any additional utility easements to be platted on this property.
- V. The applicant is reminded that a compact disc (CD) shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in AutoCAD, or sent via e-mail to MAPD (cholloway@wichita.gov). This will be used by the City and County GIS Department.

MOTION: To approve subject to staff recommendations.

HENTZEN moved, **DOWNING** seconded the motion, and it carried (9-0).

- 2-3. **SUB 2005-144: One-Step Final Plat -- BEYRLÉ ADDITION**, located on the northeast corner of 215th Street West and 45th Street North.

NOTE: This unplatted site is located in the County in an area designated as "rural" by the Wichita-Sedgwick County Comprehensive Plan. It is located in the Colwich Area of Influence.

STAFF COMMENTS:

- A. Since neither sanitary sewer nor municipal water is available to serve this property, the applicant shall contact **County Code Enforcement** to find out what tests may be necessary and what standards are to be met for approval of on-site sewerage and water wells. A memorandum shall be obtained specifying approval.
- B. In conformance with the Urban Fringe Development Standards, for individual domestic wells that are proposed, a water availability evaluation must be provided to **Sedgwick County Code Enforcement** to assure the availability of an adequate, safe supply of water that does not impair existing water rights. Easements shall be dedicated for potential future extension of public water.
- C. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning Department for recording.
- D. **County Engineering** needs to comment on the status of the applicant's drainage plan. **A drainage plan and flood study are needed. Minimum pads may be needed. The drainage easement should be shown as floodway reserve and may need to be enlarged, based on flood study.**

- E. The plat denotes three openings along 215th St. West and one opening along 45th St. North. **County Engineering recommends complete access control to 45th North, and the applicant entering into agreement with owner to the east to share existing drive. It is recommended that Lots 1 & 2 share a drive and applicant guarantee removal of existing drive on Lot 2. Access to Lot 3 should be restricted to south 60 feet.**
- The Subdivision Committee has approved one opening per lot along 215th St. West. Access to Lot 3 is restricted to the south 60 feet. The applicant shall meet with County Engineering to discuss entering into agreement with the owner to the east to share the existing drive along 45th St. North.**
- F. **Sedgwick County Fire Department** advises that all access drives shall be in accordance with Sedgwick County Service Drive Code.
- G. Since this is a County plat beyond Wichita's three-mile ring, approval will not be needed by City Council and that signature block may be deleted.
- H. The applicant is advised of the likelihood that the year "2006" will need to replace "2005" within various signature blocks.
- I. The Applicant has platted a 25-ft building setback, which represents an adjustment of the Zoning Code standard of 30 feet for the RR, Rural Residential District. The Subdivision Regulations permit the setback provisions to be modified by the plat upon the approval of the Planning Commission.
- J. The Applicant is reminded that a platting binder is required with the final plat. Approval of this plat will be subject to submittal of this binder and any relevant conditions found by such a review.
- K. The plat's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- L. The applicant shall install or guarantee the installation of all utilities and facilities that are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- M. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- N. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (Phone: 316-946-4556) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- O. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- P. The owner of the subdivision should note that any construction that results in earthwork activities that will disturb one (1) acre or more of ground cover requires a Federal/State NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Also, for projects located within the City of Wichita, erosion and sediment control devices must be used on ALL projects. For projects outside of the City of Wichita, but within the Wichita Metropolitan area, the owner should contact the appropriate governmental jurisdiction concerning erosion and sediment control device requirements.
- Q. Perimeter closure computations shall be submitted with the final plat tracing.
- R. Recording of the plat within 30 days after approval by the City Council and/or County Commission.
- S. The representatives from the **utility companies** should be prepared to comment on the need for any additional utility easements to be platted on this property.
- T. A compact disc (CD), which will be used by the City and County GIS Departments, detailing the final plat in digital format in AutoCAD. If a disc is not provided, please send via e-mail to Cheryl Holloway (E-Mail address: cholloway@wichita.gov). Please include the name of the plat on the disc.

MOTION: To approve subject to staff recommendations.

HENTZEN moved, **DOWNING** seconded the motion, and it carried (9-0).

2-4. DED2005-31: Dedication of a Sidewalk and Utility Easement, located east of Hood and south of 29th Street North.

APPLICANT: Mennonite Housing, 2145 N. Topeka, Wichita, KS 67214

AGENT/SURVEYOR: Don Armstrong, Armstrong Land Survey, 1601 E. Harry, Wichita, KS 67211-4504

LEGAL DESCRIPTION: The north 10 feet of Lot 1, Heather Addition, Wichita, Sedgwick County Kansas.

PURPOSE OF DEDICATION: This dedication is associated with a lot split case (SUB 2005-131), and is being dedicated for construction and maintenance of a sidewalk and public utilities.

STAFF RECOMMENDATION: Accept the Dedication.

MOTION: To approve subject to staff recommendations.

HENTZEN moved, **DOWNING** seconded the motion, and it carried (9-0).

2-5. DED2005-32: Dedication of Access Control. located east west of Maize Road and on the south side of 21st Street North.

APPLICANT: Shamrock Properties, c/o Jay Storey, 220 N. 159th Street East, Wichita KS 67230

AGENT/SURVEYOR: Baughman Company, P.A. 315 Ellis, Wichita, KS 67211

LEGAL DESCRIPTION: All of Lot 1, Pearson Farms Third Addition, Wichita, Sedgwick County, Kansas, EXCEPT that part described as follows: Commencing at the northerly most corner of Lot 1, thence S01° 21'21" W, 327.63 feet to a corner of Lot 1, for the point of beginning; thence continuing S01° 21'21" W, 268 feet to a point on the south line of Lot 1; thence N88° 28'51" E, 200.25 feet to the southeast corner of Lot 1; thence N01° 21'21" E along the east line of Lot 1, a distance of 257.96 feet to the southern most northeast corner of Lot 1; thence N 88° 38'39" W 200 feet to the point of beginning.

PURPOSE OF DEDICATION: This dedication is associated with a lot split case (SUB 2005-107), and is being dedicated for complete access control, except for one opening along 21st Street.

STAFF RECOMMENDATION: Accept the Dedication

MOTION: To approve subject to staff recommendations.

HENTZEN moved, **DOWNING** seconded the motion, and it carried (9-0).

❖ **PUBLIC HEARINGS – VACATION ITEMS**

3-1. VAC 2005-43: Request to Vacate a Platted Utility Easement.

OWNER/APPLICANT: Maize Road LLC c/o Jay Russell

AGENT: Baughman Company, PA c/o Phil Meyer

LEGAL DESCRIPTION: Generally described as the platted 10-foot utility easement, centered along the common lot line of Lots 36 & 37, Block C, Southern Ridge Addition, Wichita, Sedgwick County, Kansas

LOCATION: Generally located approximately ¼ mile of Pawnee Boulevard, west of Maize Road, and west of the Yosemite Court – Yosemite Street intersection, on the north side of Yosemite Street (WCC District #IV)

REASON FOR REQUEST: Boundary shift to allow for larger lots

CURRENT ZONING: Subject property and all abutting and adjacent properties are zoned "SF-5" Single-family Residential

The applicant is requesting the vacation of a portion of the platted 10-foot side yard utility easement as described. There are no utilities, manholes or water and sewer lines in the platted easement. Sewer is in a platted easement along the lots' Yosemite Street frontage. The Southern Ridge Addition was recorded with the Register of Deeds January 15, 2003.

Based upon information available prior to the public hearings and reserving the right to make recommendations based on subsequent comments from Public Works, Strom Water, franchised utility representatives and other interested parties, Planning Staff recommends approval to vacate the portion of the platted 10-foot easement as described in the legal description with the following conditions.

A. That after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, the MAPC makes the following findings:

1. That due and legal notice has been given by publication as required by law, by publication in the Wichita Eagle of notice of this vacation proceeding one time December 1, 2005, which was at least 20 days prior to this public hearing.

2. That no private rights will be injured or endangered by the vacation of the above-described portion of the platted easement and the public will suffer no loss or inconvenience thereby.
 3. In justice to the petitioner, the prayer of the petition ought to be granted.
- B. Therefore, the vacation of the platted easement described in the petition should be approved with conditions:
- (1) Vacate the platted 10-foot utility easement, as described in the legal description, contingent upon approval by Public Works, Water & Sewer, Storm Water and any other the franchised utility companies. Retain any easement needed for existing utilities, as recommended by public and franchised utilities. Provided an accurate legal description of the applicant's site and the vacated portion of the easement on a word document, via e-mail.
 - (2) Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicants and at the applicant's expense. Provide any recommended easements for relocated utilities. Provide Planning Staff with the original easement that has been reviewed and approved by Public Works/Water & Sewer; this document will go with the Vacation Order to WCC for final action and subsequent recording with the register of Deeds. If utilities are to be relocated, retain the easement until they are relocated.
 - (3) All improvements shall be according to City Standards.
 - (4) Per the MAPC Policy Statement #7, all conditions to be completed within one year of approval by the MAPC or the vacation request will be considered null and void. All vacation request are not complete until the Wichita City Council or the Sedgwick County Board of County Commissioners have taken final action on the request and the vacation order and all required documents have been provided to the City, County and/or franchised utilities and the necessary documents have been recorded with the Register of Deeds.

SUBDIVISION COMMITTEE'S RECOMMENDED ACTION:

The Subdivision Committee recommends approval subject to the following conditions:

- (1) Vacate the platted 10-foot utility easement, as described in the legal description, contingent upon approval by Public Works, Water & Sewer, Storm Water and any other the franchised utility companies. Retain any easement needed for existing utilities, as recommended by public and franchised utilities. Provided an accurate legal description of the applicant's site and the vacated portion of the easement on a word document, via e-mail.
- (2) Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicants and at the applicant's expense. Provide any recommended easements for relocated utilities. Provide Planning Staff with the original easement that has been reviewed and approved by Public Works/Water & Sewer; this document will go with the Vacation Order to WCC for final action and subsequent recording with the register of Deeds. If utilities are to be relocated, retain the easement until they are relocated.
- (3) All improvements shall be according to City Standards.
- (4) Per the MAPC Policy Statement #7, all conditions to be completed within one year of approval by the MAPC or the vacation request will be considered null and void. All vacation request are not complete until the Wichita City Council or the Sedgwick County Board of County Commissioners have taken final action on the request and the vacation order and all required documents have been provided to the City, County and/or franchised utilities and the necessary documents have been recorded with the Register of Deeds.

MOTION: To approve subject to staff recommendations.

HILLMAN moved, **DOWNING** seconded the motion, and it carried (11-0).

3-2. **VAC 2005-44: Request to Vacate an Easement Dedicated by Separate Instrument.**

OWNER/APPLICANT: Parkway Partners, LLC

AGENT: PEC c/o Rob Hartman

LEGAL DESCRIPTION: Generally described as the 20-foot utility easement (see attached legal), dedicated by separate instrument (Film/Page 28589615) on Lots 5 & 4, the Wilson Estates Medical Park 2nd Addition, Wichita, Sedgwick County, Kansas.

LOCATION: Generally located south of 21st Street north and west of Webb Road, southwest of the Wilson Estates Parkway and Webb Road intersection (WCC District #II)

REASON FOR REQUEST: Change in development plans

CURRENT ZONING: Subject property and all abutting and adjacent properties are zoned "GO" General Office

The applicant is requesting consideration for the vacation of a 20-foot utility easements dedicated by separate instrument as described. The easement that is proposed to be vacated was dedicated and recorded as a condition for VAC2004-24. Because

this easement was filed with the register of Deeds with no notice to planning, VAC2004-24 was never completed, thus the platted easement that was petitioned for vacation in VAC2004-24 was never vacated. As a follow up, VAC2004-24 will be sent to WCC for final action (along with a copy of the recorded easement) closing it out and VAC2005-44 will then vacate the recorded easement that was a requirement of VAC2004-24. There are no utilities, manholes, sewer or water lines in the easement. The Wilson Estates Medical Park 2nd Addition was recorded with the Register of Deeds January 8, 2004.

Based upon information available prior to the public hearings and reserving the right to make recommendations based on subsequent comments from City Public Works/Water & Sewer, franchised utility representatives and other interested parties, Planning Staff recommends approval to vacate the portion of the utility easement dedicated by separate instrument as described in the legal description with the following conditions.

- A. That after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, the MAPC makes the following findings:
1. That due and legal notice has been given by publication as required by law, by publication in the Wichita Eagle of notice of this vacation proceeding one time December 1, 2005, which was at least 20 days prior to this public hearing.
 2. That no private rights will be injured or endangered by the vacation of the above-described portion of the utility easement dedicated by separate instrument and the public will suffer no loss or inconvenience thereby.
 3. In justice to the petitioner, the prayer of the petition ought to be granted.
- B. Therefore, the vacation of the portion of the utility easement dedicated by separate instrument described in the petition should be approved with conditions:
- (1) Vacate only that portion of the easement dedicated by separate instrument as described in the legal description, as approved by City Water & Sewer/Public Works. Provide Planning Staff the approved legal description of the vacated portion of easement, via e-mail on a Word document.
 - (2) If needed provide a City Water & Sewer/Public Works with another easement. Provide Planning Staff with the original easement that has been reviewed and approved by Public Works/Water & Sewer; this document will go with the Vacation Order to WCC for final action and subsequent recording with the register of Deeds.
 - (3) Retain the easement until all utilities have been relocated and provided with easement and/or any other conditions to be met are completed per the standards of all utility companies.
 - (4) Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility and at the expense of the applicant.
 - (5) All improvements shall be according to City Standards.
 - (6) Per MAPC Policy Statement #7, all conditions to be completed within one year of approval by the MAPC or the vacation request will be considered null and void. All vacation request are not complete until the Wichita City Council or the Sedgwick County Board of County Commissioners have taken final action on the request and the vacation order and all required documents have been provided to the City, County and/or franchised utilities and the necessary documents have been recorded with the Register of Deeds.

SUBDIVISION COMMITTEE'S RECOMMENDED ACTION:

The Subdivision Committee recommends approval subject to the following conditions:

1. Vacate only that portion of the easement dedicated by separate instrument as described in the legal description, as approved by City Water & Sewer/Public Works. Provide Planning Staff the approved legal description of the vacated portion of easement, via e-mail on a Word document.
2. If needed provide a City Water & Sewer/Public Works with another easement. Provide Planning Staff with the original easement that has been reviewed and approved by Public Works/Water & Sewer; this document will go with the Vacation Order to WCC for final action and subsequent recording with the register of Deeds.
3. Retain the easement until all utilities have been relocated and provided with easement and/or any other conditions to be met are completed per the standards of all utility companies.
4. Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility and at the expense of the applicant.
5. All improvements shall be according to City Standards.
6. Per MAPC Policy Statement #7, all conditions to be completed within one year of approval by the MAPC or the vacation request will be considered null and void. All vacation request are not complete until the Wichita City Council or the Sedgwick County Board of County Commissioners have taken final action on the request and the vacation order and all required documents have been provided to the City, County and/or franchised utilities and the necessary documents have been recorded with the Register of Deeds.

MOTION: To approve subject to staff recommendations.

HILLMAN moved, **DOWNING** seconded the motion, and it carried (11-0).

3-3. VAC 2005-45: Request to Vacate an Easement Dedicated by Separate Instrument.

OWNER: Arthur E. Alvis, Jr.

AGENT: Ryan McCune, PE

LEGAL DESCRIPTION: Generally described as that portion of the 20-foot utility easements (see attached legal) dedicated by separate instrument (Film 705, Page 314, recorded 1-21-1985) that lies on Lots 3 & 4, Comotara Industrial Park Fourth Addition, Wichita, Sedgwick County, Kansas (WCC District #II)

LOCATION: Generally located between Rock and Webb Roads, south of the 37th Street North – Toben Street intersection

REASON FOR REQUEST: Expansion of existing building

CURRENT ZONING: Subject property and all abutting and adjacent properties are zoned "LI" Limited Industrial

The applicant is requesting consideration for the vacation of the portion of a 20-foot sewer easement dedicated by separate instrument as described. Per the applicant's exhibit there is a sewer line and manhole in that portion of the easement the applicant wants to vacate. There are no utilities or water lines in the easement. The Comotara Industrial Park Fourth Addition was recorded with the Register of Deeds October 16, 1978.

Based upon information available prior to the public hearings and reserving the right to make recommendations based on subsequent comments from City Public Works/Water & Sewer, franchised utility representatives and other interested parties, Planning Staff recommends approval to vacate the portion of the utility easement dedicated by separate instrument as described in the legal description with the following conditions.

- A. That after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, the MAPC makes the following findings:
1. That due and legal notice has been given by publication as required by law, by publication in the Wichita Eagle of notice of this vacation proceeding one time December 1, 2005, which was at least 20 days prior to this public hearing.
 2. That no private rights will be injured or endangered by the vacation of the above-described portion of the utility easement dedicated by separate instrument and the public will suffer no loss or inconvenience thereby.
 3. In justice to the petitioner, the prayer of the petition ought to be granted.
- B. Therefore, the vacation of the portion of the utility easement dedicated by separate instrument described in the petition should be approved with conditions:
1. Vacate only that portion of the easement dedicated by separate instrument as described in the legal description and as approved by all utilities. Provide Planning Staff the approved legal description of the vacated portion of easement, via e-mail on a Word document.
 2. If needed, provide a guarantee to abandon manhole on west portion of the easement dedicated by separate instrument per the standards of City Water & Sewer/Public Works. If needed, replace manhole on west portion of the easement dedicated by separate instrument with another per the standards of City Water & Sewer/Public Works. Provide Water & Sewer/Public Works with all needed documentation to transfer existing sanitary sewer line located in vacated portion of described easement from a public line to a private line, with the owner of the property responsible for maintenance and repair of it.
 3. Retain the easement until all utilities have been relocated and provided with easement and/or any other conditions to be met are completed per the standards of all utility companies.
 4. If needed provide City Water & Sewer/Public Works with another easement. Provide Planning Staff with the original easement that has been reviewed and approved by Public Works/Water & Sewer; this document will go with the Vacation Order to WCC for final action and subsequent recording with the register of Deeds.
 5. Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility and at the expense of the applicant.
 6. All improvements shall be according to City Standards.
 7. Per MAPC Policy Statement #7, all conditions to be completed within one year of approval by the MAPC or the vacation request will be considered null and void. All vacation request are not complete until the Wichita City Council or the Sedgwick County Board of County Commissioners have taken final action on the request and the vacation order and all

required documents have been provided to the City, County and/or franchised utilities and the necessary documents have been recorded with the Register of Deeds.

SUBDIVISION COMMITTEE'S RECOMMENDED ACTION:

The Subdivision Committee recommends approval subject to the following conditions:

1. Vacate only that portion of the easement dedicated by separate instrument as described in the legal description and as approved by all utilities. Provide Planning Staff the approved legal description of the vacated portion of easement, via e-mail on a Word document.
2. If needed, provide a guarantee to abandon manhole on west portion of the easement dedicated by separate instrument per the standards of City Water & Sewer/Public Works. If needed, replace manhole on west portion of the easement dedicated by separate instrument with another per the standards of City Water & Sewer/Public Works. Provide Water & Sewer/Public Works with all needed documentation to transfer existing sanitary sewer line located in vacated portion of described easement from a public line to a private line, with the owner of the property responsible for maintenance and repair of it.
3. Retain the easement until all utilities have been relocated and provided with easement and/or any other conditions to be met are completed per the standards of all utility companies.
4. If needed provide City Water & Sewer/Public Works with another easement. Provide Planning Staff with the original easement that has been reviewed and approved by Public Works/Water & Sewer; this document will go with the Vacation Order to WCC for final action and subsequent recording with the register of Deeds.
5. Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility and at the expense of the applicant.
6. All improvements shall be according to City Standards.
7. Per MAPC Policy Statement #7, all conditions to be completed within one year of approval by the MAPC or the vacation request will be considered null and void. All vacation request are not complete until the Wichita City Council or the Sedgwick County Board of County Commissioners have taken final action on the request and the vacation order and all required documents have been provided to the City, County and/or franchised utilities and the necessary documents have been recorded with the Register of Deeds.

MOTION: To approve subject to staff recommendations.

HILLMAN moved, **DOWNING** seconded the motion, and it carried (11-0).

❖ **PUBLIC HEARINGS**

4. **Case No.: CON2005-51** - Madeline Akers-Woods (property owner/applicant), Youth Horizons (Earnest Alexander) / Baughman Company P.A. (Russ Ewy) Request Sedgwick County Conditional Use for Group Residence, Limited on property zoned "RR" Rural Residential on property described as;

The North 1/2 of the SE 1/4 of Section 12, Township 25 South, Range 1 East of the 6th P.M., Sedgwick County, Kansas, except that part taken for road. Generally located West of Woodlawn and 1/2 mile north of 109th Street North.

MAPC DEFERRED DECEMBER 8, 2005

MILLER Commissioners, at the last meeting you directed that the applicant and the neighbors' get together and have a meeting, and that someone from Planning staff be present. That meeting did occur December 19th. The bottom line is there were some tentative agreements between the neighbors that are represented by Mr. Kaplan, and the applicant. But it is my understanding that the agreement has not been concluded.

Theoretically they have agreed to a condition, which would require the applicant to provide a way for Youth Horizon's to verify that they don't have any children in this facility who are offenders other than truancy. I don't think that agreement has actually been concluded, but conceptually they have agreed to it, if there is a way to make it happen. Now for the other property owners that are not represented by Mr. Kaplan, I do not know whether they were satisfied with that or not, but that is where we stand. The meeting went very well. They did a lot of discussing about how the program works, supervision, who all is there, and what type of children are there, and that was pretty much hashed out at the meeting. I think there was good information that was provided.

The December 8, 2005, meeting minutes do not indicate that you actually closed the public hearing at the end of that last meeting, so if your intention was to do that, then you would need to do something to do that now, or if you intend to take more testimony then you could open it up for further testimony. That is entirely at your discretion.

ALDRICH I know this item was deferred from December 8th, but I have a general question as to why wasn't the Agenda Item 4 reinserted back into our packets?

MILLER The original staff report should have been included. I apparently led Rose to believe that I did not want anything put in and so she did not put anything in there, and what I thought she was doing was putting the original staff report back in. That is my fault.

DOWNING This agreement that you spoke of, that has not been finalized yet? How would that occur?

MILLER Essentially, based on the discussions, and if I misstate something from the applicant's viewpoint they can let you know. From what I heard at the meeting, they have people on staff who actually review the files for each one of the kids that are accepted, and they then make a decision before the kid is allowed in the program whether or not they are going to take that person or not.

What Mr. Kaplan's group would want is some sort of a way for whoever it is that reviews those files, they would either annually or upon request, provide a statement that says, "I have reviewed the files, and there are no children here that are juvenile offenders other than truancy."

The issue is, as you are aware, juvenile records are not open to the public so there is no way for Code Enforcement or any private individual to check this out. It would have to be someone who is legally authorized to review these files. The impression that Mr. Kaplan's group has is that since they are not identifying who the children are, it is just a collective statement that either there is or there isn't an offender present that meets their goal that there are no offenders that reside in the house.

DOWNING This certification would be conducted by one of the Youth Horizon folks?

MILLER As I understood it from the meeting, Youth Horizon's would find someone who is legally able to do that. Either someone on their staff, or a neutral third party that is willing to do that.

DOWNING So essentially we have a privacy problem?

MILLER Yes.

DOWNING Is that individual available today, or are we talking about a ghost that we can never come up with?

MILLER At the meeting they actually named a person who used to be on staff that is no longer on staff but would have the ability to do that. I don't know if they are actually going to use that person or if it would be someone else. But, I think the intent of Mr. Kaplan's group is that they don't really care specifically who it is, as long as there is someone that is licensed and accountable for reviewing it, and would be expected to be truthful about the results of the review.

HENTZEN Dale, in the first background paragraph of the December 8th staff report, it talks about a "group residence" for up to eight boys who meet the definition of "children in need of care." Now you are using the definition that they are apparently guilty of truancy. Does that mean that covers all the "children in need of care" or does it just limit it? What is your definition of truancy?

MILLER Truancy is not attending school. Children who are suppose to be in school and not showing up would be truant. The "children in need of care" was the description that was given to me when I talked to the applicant about what kind of kids they take. The only issue about the truancy thing is because, as they described the kids, those were the kids that they would consider. That was what was said at the meeting. Mr. Alexander said that they didn't take kids who were offenders, and the only exception that they would make is if truancy was their only issue.

HENTZEN Are we limiting those children that they have to be guilty of truancy or they cannot be in this house?

MILLER No. That is the only exception.

BISHOP I was going to observe that truancy can be an indicator of a "child in need of care" because it can be an indicator of neglect for instance. For instance parents that may chose to keep the oldest child out of school to take care of younger children because they have a babysitting problem. Even though truancy is on the child's record it may or may not be truly his or her doing.

WARNER Are there people here today, after we have listened to the applicant that want to talk to the Commission either in favor or against this item? If not then, I will at this point and time close the public hearing, and we will continue with Mr. Kaplan.

JOHNSON You can't do that.

ROBERT KAPLAN, Attorney, 430 N. Market, Wichita, KS 67201 would simply like a statement from the podium so that it is contained in the record from the applicant's representative that we are at least agreed in principal; so I have it in the record and we can then work out the remainder of the legal document. But I would like that in the record if Mr. Ewy can accommodate that.

ALDRICH If it is closed from the public...

JOHNSON We can't.

WARNER He is the agent for the applicant.

RUSS EWY, BAUGHMAN COMPANY, 315 Ellis, Wichita, KS Dale gave a great synopsis of what happened at that meeting, and as you recall last time we were standing here discussing this, I think we have come a long way in defusing a lot of the myth and questions "who is Youth Horizons?" What organization they are and really got a good comfort level that a "group residence" is not necessarily a bad use for this location.

We whittled it down to basically an issue of trust; that what we were stating as far as the types of children, the children's background, coming into this home would be agreeable and somewhat enforceable to the area property owners. There is a whole lot that is going to go on between the two sides in the next few days and weeks to try and reach an agreement.

Mr. Kaplan had asked me to come up and make a statement as to agreeing in principal, and I think the best way that I can characterize that agreement is, we had spoken about the types of children that will be present at this facility. Mr. Kaplan, as well as the property owners that attended the meeting, accepted that. We weren't going to go for a certain child that would have a certain criminal record. The question, and most of the debate at the meeting centered around how do both parties reach an agreement? How do both parties get to the ultimate goal of assuring the neighbors that the residence will be operated in a manner that we have articulated in two meetings? Now the finer details of that have yet to be worked out.

I think we would agree in principal that we are seeking the same goal. Our issue is that there are liabilities that Youth Horizon's would face dealing with this privacy issue. We may not be able to provide the exact agreement that Mr. Kaplan is seeking. We are hoping to be able to do as much as we can working with him. As much as I am allowed to speak on behalf of Youth Horizon's, Youth Horizon's legal staff, the attorney's and most importantly their board members are the people who ultimately answer to whether or not we can put some sort of agreement into place.

WARNER Has this been put before the Youth Horizon Board?

EWY We just received the agreement yesterday afternoon about 3:30 p.m., and we forwarded that on yesterday afternoon. The agreement is most likely in the hands of all of the decision makers for Youth Horizon's. As you can imagine, there are a lot of legal issues. It is simply not this Restrictive Covenant or whatever form it may take, legally appropriate. It is whether or not Youth Horizon's can do what Mr. Kaplan is seeking to do. Yes, the process has been started.

HILLMAN You were talking about legal liabilities. The State of Kansas has the background information on these children. They provide the folders to you. You do the best job of reviewing them as you can. If somehow they have misrepresented the child, or something has taken place since the last version of the folder, the liability shouldn't be on you should it? Shouldn't it on the State?

EWY That is my understanding from what has been discussed in several meetings.

HILLMAN That is where we left it last time so I don't see a problem going through this process, and the neighbors shouldn't be suing you if you can show, in fact, that the information that you had at the time is valid. They should be going after the State.

DOWNING Are you convinced yourself that this agreement can be reached? Or if we were to approve this subject to that agreement reached would be essentially be voting against it or killing it because the agreement couldn't be reached?

EWY My impression of this is that this discussion between the two parties is really outside the realm of this Conditional Use. Obviously, Mr. Kaplan, and any other opponents of the proposed Conditional Use, would have the ability to file protest petitions, or file an appeal to the District Court, if it goes that far. But as far as the ins and outs of this private agreement, in whatever form it may take, I was not expecting that to be made part of the Conditional Use itself.

WARNER Any other questions? Okay we will bring this back to the Planning Commission for discussion and decision.

MARNELL My question is for staff. In terms of the limitation of the Conditional Use Permit, could we add in there that the youth that would be present at this, just as a condition of this even though we couldn't or staff couldn't enforce it, or wouldn't have the ability to look at the record on the child, if we just simply say that they would not have criminal records, or offense records, with the exception of truancy?

MILLER I spoke with the County Counselor before this, and he may want to speak to that more directly, but as least prior to the meeting, the idea was that we could put that in there. I don't know that it actually serves anything, but it could be put in there.

MARNELL For me what it would serve, and maybe there is a transfer of ownership issue here that would kill that, but if you grant this Conditional Use Permit and five years from now Youth Horizon's sells that facility to somebody else, does that Conditional Use Permit die? Is it specifically to them or does it run with the land?

MILLER The permit runs with the land.

MARNELL So the permit runs with the land, and now they are out of it, and somebody else moves kids directly on a contract with Sedgwick County out there, they are wide open to whatever they have done.

MILLER Theoretically, at the meeting what they said was, that should Youth Horizon's go away they are obligated to the folks that are donating the money to make this happen, to turn it over to another group that has the same mission as Youth Horizon's. Whatever that is worth.

MARNELL Those are all private agreements.

MILLER True.

MARNELL If we put that conditions in here, then any sale of it to somebody else or somebody using it for a different use would be a violation of the Conditional Use.

MILLER That would be true, yes.

JOHNSON I am curious, we let the applicant speak and we are not going to let the opposition speak? Since the applicant gave us new information, how can we close the public hearing? Or can we?

WARNER It is my understanding that even though the hearing is closed the applicant would have a chance to speak. Do you think we are missing something?

JOHNSON I don't know.

WARNER Any other discussion? Hearing none I will entertain a motion.

BISHOP I would like to hear from the County Counselor. We don't have a motion yet, so maybe it is a non-issue, but if there is a motion to make that a condition I will have a question about that. I am a little concerned about enforceability.

BOB PARNCAOTT, Assistant County Counselor I couldn't hear the rest of the question. What exactly would you like me to answer?

BISHOP If we were, and there is no motion on the floor so I don't know if this is going to be moot or what, but if we were to add a condition having to do with the level of adjudication of the children that would be placed there, is that enforceable?

PARNACOTT It is enforceable. The question is how do you find out that a violation has occurred? Since we wouldn't have any opportunity, probably. I am not that familiar with the privacy laws in this case to how would Code Enforcement be able to verify that no children have been admitted to the facility that don't met the criteria. We could have them provide us a report once a year, either from themselves or from an independent source like an auditor, that says they have reviewed the files and that nobody outside the criteria have been accepted, and we could rely on that. The problem would be an enforcement issue. How would one find out about a violation? But it certainly is enforceable. And there maybe other ways to find out about violations.

WARNER Would it be enforceable if the operation changed hands?

PARNACOTT If it was a part of the Conditional Use, then yes it would be enforceable to subsequent purchasers because it would run with the land.

MOTION: To approve subject to staff recommendations.

HENTZEN moved, **ALDRICH** seconded the motion.

WARNER That is not going to cover what we just discussed as far as the children's criminal history.

HENTZEN I think that both parties gave us a consensus report that they can work out those details.

BISHOP I assume that staff could put in the right wording, because we have apple and oranges here. The agreement between the applicant and the neighbor's and Mr. Kaplan's group is one thing, and that is a completely different thing that we really can't reflect on. I am assuming the language will simply refer to the level of adjudication of the children that we are agreeing to be placed there.

WARNER Commissioner Marnell, as you discussed whether the conditions go with the land, and it is my understanding that the counselor said that it is enforceable. Does this motion cover what you were talking about?

MARNELL I am not an attorney, but I don't think so.

WARNER I am concerned about the motion.

MARNELL I don't think the motion does.

WARNER I don't think it does either.

MARNELL This is kind of like what we get into with neighborhood covenants when people try to get us to enforce covenants, which are private agreements, versus Conditional Use, or subdivision requirements, they are two different issues. You just have to trust that whomever the Board of Directors at the time if they ever sold the thing would sell to somebody who did similar services, and that they would also agree to be bound by the same agreement.

WARNER From what I understood after discussion, and what the County Counselor is saying, that as a Conditional Use we could put in the requirements of the children, as far as their criminal history; that we could make that a condition of this and it would run with the land. As far the enforcement or the policing of it, I don't know, but the neighbors could raise cane and get the thing policed.

ALDRICH Will this be sitting precedence? Or have there been other decisions made on zoning issues like this with those types of conditions.

SCHLEGEL It is an unusual condition to say the least.

GOLTRY We have, and I am looking at Joe Lang because I know this is similar to the conditions on the Parallax Correctional Placement Residence that was approved on George Washington Blvd. and Harry area. It limited the number of adjudicated folks that could be on the premises at any given time. That is different because that was adult. We are not talking about adults but in terms have we had a precedent for trying to establish a certain population as being residing in the location. Yes we have done that.

HENTZEN The staff recommendation includes just what she mentioned, the number of people that could be there or reside there. I didn't notice that there was a specific regulation on what their private backgrounds were.

GOLTRY I believe that was not in the original staff recommendation; that would need to added to the motion, as I listen to the motion being recited.

HILLMAN Call the question.

MOTION CARRIED 8-3. (WARNER, MITCHELL, JOHNSON)

5. **Case No.: CUP2005-63 and ZON2005-49** – Kensington Gardens, LLC, c/o William L. Cozine, Managing Member (owner); Ruggles & Bohm, PA c/o Tom Ruggles (agent) Request The creation of Cedar Creek Marketplace Commercial Community Unit Plan; and Zone change from "SF-5" Single-family Residential to "LC" Limited Commercial on property described as;

That part of Lot 1 and Reserve "A" in Kensington Gardens, Wichita, Sedgwick County, Kansas, described as follows: Beginning at the northwest corner of said Lot 1; thence S 89 degrees 16'46"W, 560 feet to a corner of said Reserve "A"; thence N 00 degrees 43'06"W along the west line of said Reserve, 574.73 feet; thence N 58 degrees 32'58"E, 114.17 feet; thence S 87 degrees 05'38"E, 411.71 feet; thence S 88 degrees 11'31"E, 255.05 feet; thence S 79 degrees 20'00"E, 273.06 feet; thence S 66 degrees 47'00"E, 182.74 feet; thence N 23 degrees 13'00"E, 30 feet; thence S 66 degrees 47'00"E, 186.05 feet; thence S 54 degrees 47'00"E, 372.09 feet; thence along a curve to the right having a radius of 1779.86 feet and a chord bearing S 43 degrees 50'42"E, 306.43 feet, through a central angle of 19 degrees 45'11", a distance of 306.81 feet; thence S 54 degrees 18'07"W, 320.06 feet; thence S 48 degrees 58'38"W, 407.19 feet; thence S 00 degrees 43'06"E, 34.39 feet; thence S 48 degrees 58'38"W, 407.19 feet; thence S 00 degrees 43'06"E, 34.39 feet; thence S 48 degrees 58'38" W, 124.57 feet; thence S 89 degrees 16'46"W, 172.10 feet to a point on the east line of said Lot 1; thence S 89 degrees 16'46"W, 340.00 feet to a point on the west line of said Lot; thence N 00 degrees 43'06"W, 176.39 feet; thence S 89 degrees 16'46"W, 152.24 feet; thence N 00 degrees 43'06"W, 366 feet to the point of beginning. Generally located East of Greenwich Road and south of K-96.

BACKGROUND: The applicant proposes to create a commercial Community Unit Plan containing approximately 33.5 acres east of Greenwich Road and south of K-96 and rezone the property from "SF-5" Single-family Residential to "LC" Limited Commercial.

The CUP drawing shows three parcels. Parcel 1, a pad site (1.85 acres), is located along Greenwich and requests proposed uses of bank or financial institution; ATM; office; restaurant; retail and utility, minor. Parcel 2, the largest parcel (≈19 acres) occupies the mid-section of the property and includes frontage on Greenwich and K-96. It also connects to the pond on the southeast corner of the CUP. Proposed uses added for Parcel 2 includes personal care service, personal improvement service, marine facility, recreational; printing and copying (limited) and recreation and entertainment (indoor). Parcel 3 (≈ 12 acres) requests the same uses as Parcel 1 but adds marine facility, recreational. The developer may capitalize on the pond in southeast corner of the parcel as an amenity, particularly for restaurants. Uses allowed in the "LC" district by Conditional Use are prohibited.

Ground signage on Greenwich would be monument type signs with a maximum height of 20 feet except for one site identification pole or monument sign with a maximum height of 30 feet. Along K-96, one site identification pole or monument sign with a maximum height of 30 feet is requested; building wall signage in accordance with the Wichita Sign Code would provide other signage. Window displays would be limited to 25% of window area. Moving signs except time and temp or public service message are prohibited.

Maximum building coverage would be 30% (437,909 square feet) and maximum gross floor area would be 35% (510,893 square feet). Maximum building height would be 40 feet. Perimeter setbacks are 35 feet. Buildings would have uniform architectural compatibility of character, color, texture and materials, and with predominately earth-tone colors. The agent has indicated predominately metal facades would not be allowed. Also, the agent indicated that the buildings would be developed as double frontage buildings with street side facades along K-96 rather than placing typical rear building activities along K-96. Parking lots would have similar or consistent lighting elements.

A solid screening wall (6-8 feet in height) would be as required by Unified Zoning Code for CUPs except along the pond. A landscape buffer would be provided along the edge instead.

The site is part of Kensington Gardens, a 75-acre cemetery development zoned "LC" (7 acres) for the funeral home and "SF-5" (68 acres) for the cemetery itself. The southern half of the cemetery would remain south of the proposed CUP. K-96 borders the proposed CUP on the east and north; a bike path is located within the K-96 right-of-way. The area north of K-96 is zoned "SF-20" Single-family Residential but approved for "LI" Limited Industrial subject to platting. The property southeast of K-96 is a large church.

A single-family residence zoned "SF-5" abuts the site to the southwest and an 18-acre commercial property zoned "LC" (The Manhattan Addition that is subject to a Restrictive Covenant similar to CUP development requirements) occupies the rest of the property on the northeast corner of Greenwich and 21st Street North. Other than a bank, this property is vacant. DP-234 Regency Lakes CUP (63 acres zoned "LC" and "LI") occupies the property from the northwest corner of Greenwich and 21st Street North to K-96 and is located across Greenwich from the proposed CUPs. It is partially developed with a SuperTarget, a mid-sized retail use, a restaurant under construction; several out parcels and larger parcels are vacant. DP-266 The Woodlands CUP (116 acres approved for "LC" but with 52 acres for commercial and office use), a.k.a. Oak Creek, is located on the southwest corner of Greenwich and 21st and is vacant. DP-279 Slawson East Commercial CUP (60 acres approved for "LC"), a.k.a. Crosspointe, is located on the southeast corner and is vacant. DP-277 Bruce Brown Property CUP (69 acres approved for "LC") is located south of DP-279 and also is vacant. Total amount of property approved for commercial use in this area is approximately 270 acres.

CASE HISTORY: The property is platted as part of Reserve A, Kensington Gardens, recorded April 3, 1997. Use of this tract is restricted to cemetery purposes, crematorium, mausoleum, columbarium and other uses and structures related to cemeteries and for drainage purposes.

ADJACENT ZONING AND LAND USE:

NORTH: "SF-20" K-96, vacant
SOUTH: "SF-5"; "LC" Cemetery, residence, vacant, bank
EAST: "SF-5" K-96, church
WEST: "LI", "LC" Commercial development

PUBLIC SERVICES: Access requested by DP-291 is for one entrance on Greenwich road directly opposite the K-96 off-ramp.

A traffic study for the 21st/Greenwich corridor was recently completed to identify improvements needed to accommodate increased traffic in the corridor, but the projected volumes for this tract used in the traffic study were significantly less than for uses proposed by this CUP. A rough estimate of traffic generated by the CUP would be approximately 20,000 trips per day (based on 510,000 square feet of gross floor area and with a trip generation rate of 40 vehicles per day per 1,000 gross floor area). This estimate was made without knowing the results of the traffic study evaluation that would be factoring in types of uses, multi-stop trips, drive-by stops, etc. The corridor traffic study is being reevaluated for the impact of the proposed volume of traffic potentially generated by full development of this property.

An improvement project to widen Greenwich Road along the frontage of this drive is underway (contract for construction is to be let on December 18, 2005). The project will be constructing a seven-lane facility with three northbound lanes, two southbound lanes and a wide median. The median is sufficient to allow addition of a left-turn center turn lane but this is not part of the project being constructed.

CONFORMANCE TO PLANS/POLICIES: The "Wichita Land Use Guide, as amended May 2005" of the *1999 Update to the Wichita-Sedgwick County Comprehensive Plan* identifies this area as appropriate for "major institutional" use. The requested change is not in conformance with the Land Use Guide and reflects its current approval for cemetery use.

Commercial Objective III.B encourages future commercial areas to "minimize detrimental impacts to other adjacent land uses", with **Strategy III.B.1** seeking to channel new strip commercial uses to areas identified on the "Wichita Land Use Guide", and **Strategy III.B.2** seeking to integrate out parcels to planned centers through shared internal circulation, combined signage, similar landscaping and building materials, and combined ingress/egress locations. **Commercial Locational Guideline #3** of the Comprehensive Plan recommends that commercial sites should be located adjacent to arterials. The proposed CUP is in general conformance with the Comprehensive Plan commercial objective/strategies and land use locational guidelines.

RECOMMENDATION: The proposed CUP is similar in intensity to development approved or underway in the area bounded by K-96, 21st Street North and Greenwich Road that is shown on the Land Use Guide as "regional commercial". The "regional commercial" classification encompasses major destination areas containing concentrations of commercial, office, and personal service uses that have a predominately regional market areas and high volumes of retail traffic. These areas are to be located in close proximity to major arterials or freeways. The range of uses includes major retail malls, major automobile dealerships, and big box retail outlets with a regional market draw.

The requested "LC" zoning and CUP development perhaps conforms more nearly to the Land Use Guide for "regional commercial" than to its current recommended classification of "major institutional," which reflected its approval for a large cemetery, as is being developed on the southern portion of Kensington Gardens not included within this zone change/CUP request. When the cemetery was reviewed in 1996-1997, professional opinions were expressed that the proximity of this site to K-96 and major arterials lent the site to potential commercial/retail use rather than the low intensity cemetery use. However, the conversion of the northern half of the tract from cemetery to commercial use may be perceived as undesirable by owners of plots or family members of deceased buried in the existing cemetery. Creating an adequate buffer between the two uses may be a key to addressing this potential issue.

Based on these factors, plus the information available prior to the public hearing, staff recommends the request be APPROVED subject to replatting within one year and subject to the following conditions:

- A. APPROVE the zone change (ZON2005-49) to "LC" Limited Commercial subject to platting of the entire property within one year;
- B. APPROVE the Community Unit Plan (DP-291), subject to the following conditions:
 1. The applicant shall guarantee a center left-turn lane at the entrance on Greenwich Road at time of platting.
 2. The applicant shall guarantee proportionate share of traffic signalization for the entrance at the time of platting.
 3. Add to General Provision 6: All signs shall be spaced a minimum of 150 feet apart on Greenwich Road.
 4. Add to General Provision 7: Building elevations facing K-96 shall have facades designed as street facades with elements such as but not limited to windows, doors, parking for customers, and building materials similar to the front facades. No predominately metal facades shall be permitted. Service areas including but not limited to loading docks, outdoor work and storage areas, trash receptacles, and mechanical equipment shall not be located on K-96 or shall be screened from ground level view and view of passing traffic.
 5. Clarify in General Provision 17 that plantings in a landscape buffer may be located within 75 feet of the water surface of the body of water.
 6. Any major changes in this development plan shall be submitted to the Planning Commission and to the Governing Body for their consideration.
 7. The transfer of title of all or any portion of the land included within the Community Unit Plan does not constitute a termination of the plan or any portion thereof, but said plan shall run with the land for commercial development and be binding upon the present owners, their successors and assigns, unless amended.
 8. All property included within this CUP and zone case shall be platted within one year after approval of this CUP by the Governing Body, or the cases shall be considered denied and closed. The resolution establishing the zone change shall not be published until the plat has been recorded with the Register of Deeds.
 9. Prior to publishing the resolution establishing the zone change, the applicant(s) shall record a document with the Register of Deeds indicating that this tract (referenced as DP-291) includes special conditions for development on this property.

10. The applicant shall submit 4 revised copies of the CUP to the Metropolitan Area Planning Department within 60 days after approval of this case by the Governing Body, or the request shall be considered denied and closed.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The site is part of Kensington Gardens, a 75-acre cemetery development zoned "LC" (7 acres) for the funeral home and "SF-5" (68 acres) for the cemetery itself. The southern half of the cemetery would remain south of the proposed CUP. K-96 borders the proposed CUP on the east and north; a bike path is located within the K-96 right-of-way. The area north of K-96 is zoned "SF-20" Single-family Residential but approved for "LI" Limited Industrial subject to platting. The property southeast of K-96 is a large church. A single-family residence zoned "SF-5" is abuts the site to the southwest and an 18-acre commercial property zoned "LC" (The Manhattan Addition that is subject to a Restrictive Covenant similar to CUP development requirements) occupies the rest of the property on the northeast corner of Greenwich and 21st Street North. Other than a bank, this property is vacant. DP-234 Regency Lakes CUP (63 acres zoned "LC" and "LI") occupies the property from the northwest corner of Greenwich and 21st Street North to K-96 and is located across Greenwich from the proposed CUPs. It is partially developed with a SuperTarget, a mid-sized retail use, a restaurant under construction; several out parcels and larger parcels are vacant. DP-266 The Woodlands CUP (116 acres approved for "LC" but with 52 acres for commercial and office use), a.k.a. Oak Creek, is located on the southwest corner of Greenwich and 21st and is vacant. DP-279 Slawson East Commercial CUP (60 acres approved for "LC"), a.k.a. Crosspointe, is located on the southeast corner and is vacant. DP-277 Bruce Brown Property CUP (69 acres approved for "LC") is located south of DP-279 and also is vacant. Total amount of property approved for commercial use in this area is approximately 270 acres.
2. The suitability of the subject property for the uses to which it has been restricted: The area is developing with commercial uses and is unsuited for residential use. It could continue to be developed as a cemetery.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The cemetery is potentially impacted by the development. The solid screening wall and the landscaping should mitigate some of the impacts.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and Policies: The "Wichita Land Use Guide, as amended May 2005" of the 1999 *Update to the Wichita-Sedgwick County Comprehensive Plan* identifies this area as appropriate for "major institutional" use. The requested change is not in conformance with the Land Use Guide and reflects its current approval for cemetery use. **Commercial Objective III.B** encourages future commercial areas to "minimize detrimental impacts to other adjacent land uses", with **Strategy III.B.1** seeking to channel new strip commercial uses to areas identified on the "Wichita Land Use Guide", and **Strategy III.B.2** seeking to integrate out parcels to planned centers through shared internal circulation, combined signage, similar landscaping and building materials, and combined ingress/egress locations. **Commercial Locational Guideline #3** of the Comprehensive Plan recommends that commercial sites should be located adjacent to arterials. The proposed CUP is in general conformance with the Comprehensive Plan commercial objective/strategies and land use locational guidelines. The "regional commercial" classification encompasses major destination areas containing concentrations of commercial, office, and personal service uses that have a predominately regional market areas and high volumes of retail traffic. These areas are to be located in close proximity to major arterials or freeways. The range of uses includes major retail malls, major automobile dealerships, and big box retail outlets with a regional market draw. The requested "LC" zoning and CUP development perhaps conforms more nearly to the Land Use Guide for "regional commercial" than to its current recommended classification of "major institutional," which reflected its approval for a large cemetery, as is being developed on the southern portion of Kensington Gardens not included within this zone change/CUP request. When the cemetery was reviewed in 1996-1997, professional opinions were expressed that the proximity of this site to K-96 and major arterials lent the site to potential commercial/retail use rather than the low intensity cemetery use.
5. Impact of the proposed development on community facilities: Development will increase traffic volumes on Greenwich, 21st Street North and K-96 and may spur pressure to build the other half of the interchange at Greenwich. Currently, the Greenwich interchange serves traffic from or returning to the west. However, the 21st Street North interchange provides all directions of entrance and exit and is less than a mile away. K-96 traffic from the south can exit or enter on 21st Street North. Location of the major entrance on Greenwich Road across from the K-96 off-ramp likely will trigger the need for signalization at this point. Traffic from the north will probably trigger the need for a left-turn center lane.

GOLTRY The only questions that I have received at this point have to do with the intensity of adding another 33 acres of commercial to a corner that already has an awfully lot of commercial, and the other question that arose was that when this was platted for the cemetery in 1997, there was only one point of access granted. That was along the extreme southern edge of the property. The applicant, at this point, has still requested one point of access, but they are requesting it directly across the off ramp for K-96. Staff is recommending in favor of it. I do know the applicant would like to speak about the signage requirements. They feel they should have additional signage along K-96. There was also some discussion about the screening wall on the south. I am not sure if they are still wanting to pursue that issue or not, at this point.

TOM RUGGLES, RUGGLES AND BOHM, P.A. I am the engineer and agent for the applicant. I am sorry I am not in very good voice today. The applicant is here today, as well as his architect, Mr. Dennis Smith. Unless you have questions for me, I would like Mr. Smith to come up and present some proposed changes on provision #6 having to do with signage.

DENNIS SMITH, Law Kingdom Inc., We would like to make a change to Provision #6 on the C.U.P. regarding the signage. We want to amend the sign that will be along the K-96 corridor to be 30 feet above the roadway surface and a maximum square footage of sign area of 300 square feet.

WARNER Any questions?

SMITH Strike that, and move that (request) from 30 feet to 20 feet above the roadway surface. The square footage of the sign would still be 300 square feet as I requested.

GOLTRY (speaking with applicant)

SMITH We will amend this again. We would like this to be granted as what is allowed by the Wichita Sign Code or 20 feet above the grade of the roadway surface, whichever is greater.

MOTION: Approve subject to staff recommendations with the modifications just stated regarding the signage.

MARNELL moved, **MITCHELL** seconded the motion, and it carried (11-0).

6. **Case No.: ZON2005-53** – Vincent L & James R Scott; Charles T Watkins Jr.; Gary & Teresa Roushkolb, Request Zone change from “SF-5” Single-family Residential to “LC” Limited Commercial on Lots 16, 17, & 18, East Kellogg Acres Addition, Wichita, Sedgwick County, Kansas. Generally located midway between Kellogg Street & I-35, on the west side of Greenwich Road.

BACKGROUND: The applicants are requesting a zone change from “SF-5” Single-family Residential and “GC” General Commercial on Lots 16, 17 & 18, East Kellogg Acres Addition (the site) to “LC” Limited Commercial. The “GC” General Commercial zoning is generally located along the north 20-feet of Lot 18, the north side of the site. Each of the three lots is approximately 0.66-acres in size, each has 101.5-feet of frontage along Greenwich Road and all are 130-feet deep. The three lots are developed with single-family residences on each lot and all the residences appear to be occupied. The applicants propose unspecified commercial uses.

Development east of the site and immediately across Greenwich Road, includes two retail strips (built 2002 & 2004), zoned “GC” and “LC”, a car sales business (built 1990) zoned “LI” Limited Industrial and an undeveloped “GC” platted lot. The undeveloped “GC” lot is under the same ownership as the car sales business. East of these businesses is a Wal-Mart (built 2002), a Lowe’s (built 2001), some free standing fast food restaurants and platted undeveloped commercial lots. Zoning on these properties is “LI”, “GC” or “LC”. All of the properties east of the site, across Greenwich Road, are part of CUP DP-196, with the exception of the car sales properties. Abutting and adjacent to the south and west sides of the site are single-family residences and a vacant lot; all of them zoned “SF-5”. Properties abutting and adjacent to the site’s north side are single-family residences, zoned “GC”. The abutting northern “GC” zoned lot (Lot 19) with Greenwich frontage has one of the applicants listed as its owner. All of the mentioned abutting and adjacent northern, western and southern properties are in the same subdivision, the East Kellogg Acres Addition (recorded December 23, 1953) as the site.

A 10.5-acre undeveloped tract (approximately 300-feet west of the site, across Trig Street), the subject site and eleven other lots in the East Kellogg Acres addition are the last, isolated properties between Kellogg Street, IH-35 (KTA), Webb Road and Brundige Street zoned with residential, “SF-5” zoning. Counting the subject site, there are a total of 15 single-family residences in this area, all in the East Kellogg Acres Addition. These single-family residences were built in the early and mid 1950s, the early and mid 1960s and the early 1970s. The area was annexed into the City sometime between 1961 & 1970. The rest of the area’s nonresidential-zoned properties (nonresidential zoning is the overwhelming majority of zoning on properties in the area) are experiencing recent (from 2000 to present) commercial development, including the already mentioned Lowe’s, Wal-Mart, the strip retails and a Green Lantern car wash.

The site and the East Kellogg Acres Addition, which the site is a part of, are in the “Spring Branch Master Drainage Plan”. Almost all of the East Kellogg Acres Addition is identified on the Plan’s Master Map as being in the 100-year flood boundary. The plan states “That there is an abrupt rise in the flood profile upstream of IH-35 (KTA) and west of Greenwich Road.” which is the location of the East Kellogg Acres Addition. It further states that “Floodwaters upstream of IH-35 (KTA) reach nearly 10-foot in depth, and Greenwich Road is overtopped. In addition Trig Avenue becomes impassable during major storm events”. These are the two roads that define the East Kellogg Acres Addition’s east and west boundaries. A 40-foot easement runs north to south through and between all of the residential lots in the East Kellogg Acres Addition to IH-35 (KTA). The easement contains a sewer line and an open drainage ditch, with well-defined grass banks and bordering trees.

Seven of the single-family residences/lots (46.6% of the residences) in the East Kellogg Acres Addition are identified in the plan as having potential flood risk, including two of the three lots applying for the zone change. At the May 27, 2004 “Spring Branch Drainage Study” public meeting six of the residence (40%) in the East Kellogg Acres Addition provided written comments expressing their experiences, concerns and experiences with the current drainage on their properties. Two of those residences that provided written comments at that public meeting are applicants applying for the zone change.

Any development on the site will be required to provide a drainage plan to the Public Works Storm Water Engineer for review and approval, meet the access management regulations, compatibility setback standards, landscaping and any other applicable codes and development standards.

CASE HISTORY: The site is platted as three lots in the East Kellogg Acres Addition, which was recorded with the Register of Deeds December 23, 1953. The East Kellogg Acres Addition is included in the “Spring Branch Master Drainage Plan” final report.

ADJACENT ZONING AND LAND USE:

NORTH:	“GC”	Single-family residences, car wash, manufactured home sales lot
SOUTH:	“SF-5”	single-family residences
WEST:	“SF-5”	Single-family residences
EAST:	“GC” “LC” “LI”	car sales, big box retail, fast food, and strip retail

PUBLIC SERVICES: The site has access to Greenwich Road. Greenwich Road is a four-lane arterial along the site. The 2030 Transportation Plan shows no change to Greenwich Roads status. Greenwich Road has 50-feet of half street right-of-way at this location. Current traffic volumes, along Greenwich between Kellogg Street and IH-35 are approximately 7,272 vehicles per day. The 2030 Transportation Plan estimates that traffic volumes will increase to approximately 25,000 vehicles per day. Water, sewer and all other utilities are available.

CONFORMANCE TO PLANS/POLICIES: The Wichita Land Use Guide of the Comprehensive Plan classified the site as "Regional Commercial". This classification encompasses major destination areas containing concentrations of commercial, office, and personal service uses that have a predominately regional market areas and high volumes of retail traffic. These areas are located in close proximity to major arterials or freeways. The range of uses includes major retail malls, major automobile dealerships, and big box retail outlets with a regional market draw. Regional Commercial areas may also include higher density residential housing and uses typically found in Local Commercial areas. The requested "LC" zoning matches the anticipated development of the area as shown on the Guide and current development trends in the area.

The Commercial Locational Guidelines of the Comprehensive Plan recommend that commercial sites should be located adjacent to arterials and should have site design features, which limit noise, lighting, and other activity from adversely impacting surrounding residential areas. The request, with the implementation of an approved drainage plan, the access management regulations (including cross lot access), the compatibility setback standards, landscaping, screening, and the other provisions of the proposed protective overlay and any other applicable codes and development standards conforms to the Land Use Guide and the Commercial Locational Guidelines of the Comprehensive Plan.

RECOMMENDATION: The requested "LC zoning on the site is a possible preview of how the rest of the East Kellogg Acres Addition's "SF-5" lots will eventually be rezoned: a few lots at a time. The East Kellogg Acres Addition was platted and mostly developed while it was located in the County and before the current commercial development in the area began. Long time homeowners in the addition now find themselves isolated and surrounded with regional types of commercial development. Drainage, as noted in the "Spring Branch Master Drainage Plan", is a key issue that needs to be addressed with this zoning request and any future rezoning applications in the addition. Retention and storage of drainage on the site and any subsequent rezoned sites presents a challenge for the developer to in regards to how much of each site can be built on after a drainage plan has been approved by the Public Works Storm Water Engineer. Access control and cross lot access will need to be addressed in way that anticipates future rezoning and a 2030 projected increase in traffic on Greenwich that is three times higher than today. A Protective Overlay with the proposed provisions would limit the negative impact of commercial development on the remaining single-family residences in the East Kellogg Acres Addition and anticipate possible future rezoning in the area.

Based upon information available prior to the public hearings, Staff recommends APPROVAL of the "LC" zoning with a Protective Overlay. The provisions of Protective Overlay #166 include:

1. On site pole lights shall be no higher than 14-foot, if within a 100-feet of property with residential zoning. They shall be hooded and directed onto the site and away from the residential developments and zoning west, north and south of the site. No pole lights shall be located within the required compatibility setbacks along the west and south sides of the property.
2. No signs shall be permitted along the face of any building or along any street frontage that faces any property that is in a residential zoning district.
3. A drainage plan including retention and compensatory storage must be provided to the Public Work's Storm Water Engineer for review and approval, prior to any building permits being issued.
4. Dedicate by separate instrument 10-foot of right-of-way along the site's Greenwich frontage. To be provided to Planning Staff for recording with the Register of Deeds, prior to the Ordinance being published
5. A restrictive covenant providing cross lot access between the site's lots and ensuring that conformance to the current access management standards can be applied to the entire site and not on it's current configuration of three individual lots platted in the East Kellogg Acres Addition. Complete access control will be approved at the time that access from the site (not per individual lot) onto Greenwich is approved by the Traffic Engineer and implemented when commercial use replaces the current single-family uses. The current driveways for each lot's current single-family use/residences will remain in effect until such time that commercial use replaces the single-family residences. To be provided to Planning Staff for recording with the Register of Deeds, prior to the Ordinance being published.
6. In anticipation of future commercial development in the area, specifically on Lot 19, East Kellogg Acres Addition, which is under common ownership with one of the owner's of the southern abutting Lot 18, East Kellogg Acres Addition (the north portion of the subject site), the approved drainage plan and the restrictive covenant, as sited in PO #166, will extend onto Lot 19, East Kellogg Acres Addition. No access onto Trig Street from the site or Lot 19, East Kellogg Acres Addition. If needed dedicate 10-feet of right-of-way along the lot's Greenwich Road frontage.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The neighborhood located along this portion of the Greenwich Road – Kellogg Street – IH-35 (KTA) area has recently began developing with big box retailers Wal-Mart and Lowe's anchoring other commercial development in the area, including medium size strip retail, large regional car sales lots and fast food restaurants. It is reasonable to anticipate that the undeveloped platted lots in the immediate area with commercial zoning will be developed. Zoning for these commercial developments and undeveloped lots are most commonly "GC" with some "LI" and "LC" zoning. It is not uncommon to have Community Unit Plan Overlays on these commercial or industrial zoned lots. The East Kellogg Acres Addition contains the last "SF-5" zoned single-family residences in the area.

2. The suitability of the subject property for the uses to which it has been restricted: The site is zoned "SF-5" Single-family Residential and developed with three single-family residences, one on each lot as recorded on the East Kellogg Acres Addition. Recent regional commercial development in the area has made the site and the addition it is located in isolated and less desirable as a single-family residential development.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: Commercial development on the site will increase runoff in the area and potentially increase the likelihood of flooding the abutting single-family residences and water flowing over both Greenwich Road and Trig Street. Implementation of an approved drainage plan is critical for the site and its neighbors; both now and in the future if and when the other "SF-5" zoned lots apply for commercial zoning. Conformance to the current access management standards and cross lot access is critical to ensure safe access to and from the site from Greenwich Road. The implementation of the provisions of the Protective Overlay and the standards of the Unified Zoning Code over the whole site would limit the adverse impact on the abutting adjacent residential developments.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The Land Use Guide of the Comprehensive Plan identifies the subject property as appropriate for "Regional Commercial" development. The Commercial Locational Guidelines of the Comprehensive Plan recommend that commercial sites should be located adjacent to arterials and should have site design features, which limit noise, lighting, and other activity from adversely impacting surrounding residential areas. With the provisions of the proposed Protective Overlay, the site is largely in conformance to the Land Use Guide and Commercial Locational Guidelines of the Comprehensive Plan.
5. Impact of the proposed development on community facilities: Drainage in the area will be critically altered by any future commercial development, which has will increase runoff. A residential area that is located within the 100-year flood boundary will be put at risk for future flooding, if the drainage is not addressed as approved by the Public Work's Storm Water Engineer. The increase in runoff caused by future commercial development in the area/site will also have the potential to increase the frequency of water flowing over Greenwich Road and Trig Street. Ensuring that the conformance to the current access management standards and cross lot access is also critical in regulating the points of access onto Greenwich Road for public safety.

ALDRICH How can this area support a sound drainage plan without impacting the other property around there? On page 5, number 3 of the staff report, a drainage plan including retention and compensatory storage. How much area do you need? Is that area even big enough to allow that to occur?

LONGNECKER The drainage has not been done, and how much of the site can be developed will to be determined by the approved drainage plan. How this site and this area are going to develop will be determined by approved drainage as sited in the Spring Branch study. How much of this property will be retained for drainage is yet to be determined. In Condition #6 of the Protective Overlay we have included an additional lot, the abutting northern lot zoned "GC" General Commercial. The lot is owned by one of the applicants, and will be including in #5's restrictive covenant and drainage plan, with the three lots applying for the rezoning. With this additional lot included in the restrictive covenant and drainage plan we have four lots, about 2 ¾- acres in size that are going to be developed as one site at in regards to drainage and access. Again, how much of this site will to be developed is going to be determined by the drainage plan. Future development in this area will also affect this site. It will not be an easy piece of property to develop because of the drainage. The zone change is appropriate as a request, but the drainage issue is the key.

MITCHELL I disagree. Without the infrastructure how can you know what the drainage plan requires, and frankly to get enough compensatory storage where you have 10 feet of flooding at the Turnpike seems to me to be a wish list that is going to be difficult to accomplish. To zone this to a higher use and make that more difficult to accomplish that plan, and certainly to do it two lots at a time is not in my opinion, in the public interest. I think the infrastructure needs to come first, either in a plan or a project, which can be financed and constructed before we put more value to this area. I will not support the motion to approve.

BISHOP Mitch, can you explain specifically what you mean by infrastructure?

MITCHELL I am reading from the report which indicates there needs to be retention and compensatory storage, which means someplace to hold the water so that it does not flood what is being developed. I don't think he can have both in most of this area. I think if you have enough storage to hold that 10-feet of water back you will not have much left to be developed in this residential area.

HILLMAN Does staff have a plan that shows the grid of elevations? How big of an issue is drainage in this entire area? I am sure it is a larger area then just these lots.

LONGNECKER The Spring Branch Drainage Study includes a much larger area, extending north of Kellogg, east and northeast of this site. The study was completed last year. Any development that happens in this area is going to have to address the issues that were put forth in the Spring Branch Drainage Study. The site is a small area of that study, but it was in an area that was cited specifically in the study.

HILLMAN Should we review the Spring Branch Drainage Plan before we approve the zone change?

WARNER Are there any more questions of staff? We need to hear from the applicant.

DAVID UDDEN, 57 Via Verde, Wichita, KS 67203 I am the Contract Purchaser. The items that you are addressing were major concerns when we started trying to develop this property. Our engineers, Baughman Company, and its' Phil Meyer, has worked with Scott Lindebak of the engineering department for the City of Wichita. We have been assured that we can have the on-site retention that is needed, and still develop the property. What we are using as a reference is the property just to the north, which was developed last year as the Green Lantern Car Wash. The car wash is in the same Spring Branch flood zone. I think the Spring

Branch Drainage Plan had numerous public hearing with all of the residence and their flooding and drainage concerns can be addressed. The drainage area starts up north of Beech Aircraft and runs south of Harry, and takes in quite a bit of property in this site. I think we have been assured from the City of Wichita, and have a plan ready to be implemented, once the City approves it. The plan that Baughman Company has worked up and been presented in meetings with Scott Lindebak shows losing 80 feet of this property and thus able to meet the requirements in the Spring Branch Drainage Master Plan. There is a typo in the staff report. On page two of the staff report under the background portion, it says the lots are 130-feet deep, they are actually closer to 230-feet deep.

MITCHELL What does that do as far as construction of a plan that guarantees that the area left for development won't be flooded? What you have is a piece of paper. You don't have a plan to construct the infrastructure to prevent flooding of the remaining properties.

UDDEN What we have are the recommendations of our Engineering firm through meetings with the City Engineer that we have to implement to get a building permit.

MITCHELL You have to build something?

UDDEN Yes, retention areas.

MITCHELL We are talking about developing two lots at a time, building a retention system that will prevent flooding for the rest of the property, and I don't think that is shown.

UDDEN What we are developing is four lots on this site, which is about 1/2 a block.

MITCHELL We are talking about 1/2 mile between Kellogg and the Turnpike that is a severe flooding area.

UDDEN What is your recommendation?

MITCHELL For the entire plan for that area to be constructed before building is done that increases the use of that remaining property.

UDDEN I think there are recommendations in the Spring Branch Drainage Plan.

MITCHELL I know there are recommendations, but recommendations don't get things built.

UDDEN What we have shown to the City Engineer with that, they are comfortable with it; that we can on our part do the drainage retention the same as they had already approved for the Green Lantern Car Wash two years ago.

AUDIENCE I am opposed to this development, and I will not get behind the podium but I will drop off a protest petition.

MARNELL It seems to me last summer either the City or County put in an underground drainage system from somewhere up around Gilbert, down south to a subdivision that is south of the Turnpike. Do you know how that affects this development?

LONGNECKER No, I do not. I did speak to the Stormwater Engineer in regards to this proposed rezoning, and that is where I got the Spring Branch Drainage Master Plan, and he has confirmed that the applicant's engineering firm has been working with City Stormwater in regards to developing some kind of drainage retention system for this. I'm not sure that answers your question.

MARNELL I was a casual observer when I was recently driving down Greenwich, but I thought I saw storm sewer, it looked like it, and I think it was, but it may have been a sanitary sewer.

LONGNECKER There is some storm sewer in place here, as shown on this slide, but I'm not sure how far south that goes.

MARNELL My real question is part of this infrastructure that was suppose to be implemented may already be underway, because somebody did a lot of digging, putting in very large pipe, that went under the interstate and went further south, and I think it was the storm water rather than sanitary.

UDDEN Yes, I am not sure if it was the City or the County that did it, but all this water that comes down to the Turnpike there, they put in a catch basin at that point, and then directed it underneath Greenwich to the south.

MARNELL So that was storm water?

UDDEN Yes, you are correct.

MOTION: To approve subject to staff recommendations.

JOHNSON moved, **DOWNING** seconded the motion.

BISHOP I think it has been adequately pointed out by staff on the record that the retention and storage of drainage on this site and subsequent rezoned sites present a challenge in regards to how much can be built on after a drainage plan has been approved. So I think there has been lots of notice that drainage could consume a fair amount of the development.

MARNELL I am going to vote for the motion. It looks like this area has a drainage problem, but unless we change the standard by which we have allowed people to develop land we will have dead land. In the past what we have done is stipulate that development can't make drainage worse downstream and that is the requirement that the Engineering Department is charged with when

approving these drainage plans. I will trust they will require a drainage plan sufficient to not increase the problem, but even possibly to make it less of a problem.

BISHOP I am going to support the motion, but I would like to put the Subdivision Committee on notice that with the drainage plan that has been developed and with this being underlined in the staff report, I would expect them to stand tough when the platting and the subdivision process goes forward.

HILLMAN Since this drains directly into my area, I can assure you I will try to stand tough on this issue.

MOTION carried (9-2) **MITCHELL, ALDRICH**, opposed.

7. **Other matters/adjournment.**

There was a brief discussion on the Wal-Mart rezoning decision by the Wichita City Council.

The Metropolitan Area Planning Department informally adjourned at 2:45 p.m.

State of Kansas)
Sedgwick County) ^{ss}

I, John L. Schlegel, Secretary of the Wichita-Sedgwick County Metropolitan Area Planning Commission, do hereby certify that the foregoing copy of the minutes of the meeting of the Wichita-Sedgwick County Metropolitan Area Planning Commission, held on _____, is a true and correct copy of the minutes officially approved by such Commission.

Given under my hand and official seal this _____ day of _____, 2006.

John L. Schlegel, Secretary
Wichita-Sedgwick County Metropolitan
Area Planning Commission

(SEAL)